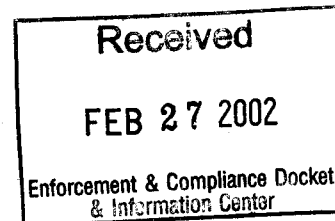


February 26, 2002

Enforcement and Compliance Docket and Information Center
Mail Code 2201A
Docket No. EC-2000-007
Air and Radiation Docket and information Center
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mr. David Schwarz
Ms. Evi Huffer
Office of Environmental Information
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460



Re: Comments on proposed rule regarding establishment of electronic reporting criteria [Docket number EC-2000-007]

Dear Mr. Schwarz and Ms. Huffer:

The Wisconsin Federation of Cooperatives (WFC) appreciates the opportunity to submit these comments on the U.S. Environmental Protection Agency's (EPA) August 31, 2001 proposed rule to govern electronic record keeping and reporting.

WFC is a state trade association that represents the interest of more than 500 cooperatives that conduct business in Wisconsin. The majority of WFC's membership is required to keep records and file reports to satisfy U.S. EPA requirements directly, or to meet delegated program requirements through the Wisconsin Department of Natural Resources (DNR) or other state agencies. Members of WFC that will be most affected by the proposed rule include agricultural supply, dairy, and electric cooperatives and are regulated under almost every EPA program.

Computer systems are used almost exclusively to assist both large and small

cooperatives with most every aspect of their operations, including record keeping and electronic reporting. WFC and its members often participate in state rulemaking committees and is quite concerned that this well intended proposal will have drastic impacts on its members and state delegated programs.

WFC fully embraces the implementation of electronic reporting and believes that EPA's proposed rule is well intentioned, but as drafted, the flexibility in meeting current record keeping and reporting criteria would be jeopardized. The proposal is not workable as drafted. WFC presents specific comments based on the following points. **For these reasons alone, WFC urges EPA to withdraw its proposed rule and re-evaluate the impacts and intent of the enabling legislation before proceeding with a final rule.**

Although EPA describes the rule as voluntary, in effect it is mandatory.

The cost analysis has been greatly underestimated and these costs are not commensurate with its benefits.

The rule would defeat the purposes for which it is intended—facilitating electronic record keeping and reporting.

Finally, the rule would be extremely disruptive to current environmental compliance efforts that rely on electronic information.

The rule is mandatory, not voluntary

The proposed rule imposes a list of requirements that must be met by all regulated entities that maintain electronic records to satisfy regulatory requirements. The definition of "electronic record" is exceptionally broad: "any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved or distributed by a computer system." This definition could easily be interpreted to encompass any piece of information that passes through a computer with any association to an EPA regulated activity. This definition appears to include all electronic systems of WFC's cooperative businesses regulated by the EPA. Further, it appears that submission or collection of any computer-based hardcopy is considered an electronic record. Does EPA really want to read hand-written plans, procedures, reports, data, etc. if this is the only avenue for those businesses that can not afford or find software that meets EPA's criteria?

Proposed Security Requirements for Record keeping Are Burdensome and Unjustified

Understandably, EPA seeks to discourage fraud in electronic record keeping. However, the proposed rule creates a costly, and in many instances, an unachievable set of criteria that are vastly disproportionate to the mischief the rule is structured to prevent. The agency has done a poor job in its analysis of the extent to which fraud is occurring and where fraud is most likely to occur.

Instead, the proposed rule imposes across-the-board criteria, including the use of secure, computer-generated, time-stamped audit trails, the maintenance of explanatory information in connection with electronic signatures, ensuring records are searchable and retrievable, and archiving electronic records to preserve audit trails. Computer software and hardware systems used for meeting EPA requirements at most cooperatives are obsolete under these and other criteria found in the rule. These costs are immeasurable as it would include computerized process equipment, lab equipment, monitoring equipment, meters, and software for traditional and non-traditional computers. In many cases there are no current alternatives that meet the EPA requirements.

In order to revamp their electronic record keeping systems, WFC members would need to spend far more than the EPA estimates of \$40,000 in the first year and \$17,000 annually. For some WFC members, a more realistic value is hundreds of thousands. Moreover, the number of facilities that would need to comply far exceeds EPA's estimate of 6,000 because of the proposal's expansive definition of "electronic record." As drafted, WFC anticipates it will affect all of its agricultural supply, dairy, and electric cooperatives (more than 100 businesses affiliated with a smaller trade association). The costs and number of businesses is vastly underestimated. The agency has made very little real effort to assess the benefits or its impacts of its own rule.

The Rule May Discourage Electronic Record keeping

Companies that have not yet established, or fully implemented, electronic record keeping systems may think twice about doing so in light of the proposed rule. Instead of facilitating electronic record keeping, the proposed rule may well discourage it. The result may be counterproductive from the agency's standpoint if it were the case that paper record keeping resulted in more errors than electronic record keeping.

The Rule Would Disrupt Current Electronic Record keeping Systems

Although the preamble to the proposed rule suggests that electronic record keeping will begin after issuance of the rule, this is far from the case. Anyone with experience in trouble-shooting computers and computerized systems will tell you that, with new systems and software, any assumptions of a smooth transition are fool-hearted (assuming the items were available on the effective date). Additionally, there has been no prohibition on complying with EPA record keeping requirements through electronic systems, and some Wisconsin Department of Natural Resources regulations even require it. Currently DNR handles the Consolidated Air Emissions Inventory over the website. DNR is piloting electronic reporting for wastewater. Both systems encourage electronic reporting, but do not require the same definition of "electronic record" as applied by EPA. Because few, if any, existing systems will meet EPA's proposed criteria, it is likely that the effect of a final rule similar to the proposal will cause existing systems to be deemed deficient, including the state's reporting system. Without clearer justification for the electronic reporting criteria proposed, WFC can not support this rule as drafted.

Conclusion

WFC is aware that many in industry share our concerns over this rule. It is clear that EPA has understated the impacts of the rule by a wide margin and has done little to assess its benefits. The Agency's conclusion that there are no significant small business impacts because the rule is voluntary is clearly without foundation (approximately 90 percent of WFC's business are small businesses as defined by the Small Business Administration and many will be affected). WFC urges the Agency to withdraw the proposed rule and to perform credible analyses of costs, benefits, and the large and small business impacts and seek additional comments before issuing a final rule.

Sincerely,

Timothy G. Clay
Environmental Director



Tim Clay
<tim.clay@wfcmac.org>

02/26/02 06:57 PM

To: docket.oeca@epamail.epa.gov
cc:
Subject: Comments on Docket number EC-2000-007

Attached are the Wisconsin Federation of Cooperative's comments on the U.S. EPA rule referenced in the subject line. If you have any difficulties with the transmission of this email, please feel free to contact me at (608) 258-4384.

Thank you for the opportunity to comment on this important rule proposal.

Tim Clay, Environmental Director



Wisconsin Federation of Cooperatives COMMERR comments (Wordperfect).c

